

**PLANNING COMMITTEE**

**2<sup>ND</sup> FEBRUARY 2021**

**AMENDMENT SHEET**

<b><u>APPLICATION NO:</u> P2019/5304</b>	<b><u>DATE:</u> 30/10/2019</b>
<b>PROPOSAL:</b>	Erection of a Class A1 foodstore (1,899 sqm gross floor area) with associated access, car parking and landscaping (amended red line to facilitate improved access and visibility splays)
<b>LOCATION:</b>	Land Adjacent To CSN Precision Engineering, Neath Abbey Road, Neath SA10 7BR
<b>APPLICANT:</b>	ALDI Stores Ltd
<b>TYPE:</b>	Full Plans
<b>WARD:</b>	Bryncoch South

**Member Questions**

Councillor Steve Hunt has noted some concerns about traffic congestion based on his experience of the road network in this area. In particular (in summary) he has asked in advance: -

*What has significantly changed since previous refusal of an Aldi at the site on highway grounds? I would like to have a better understanding of why as conditions would suggest this problem would go away with any traffic management scheme.*

**Response:**

The Highway Officer has reviewed Cllr Hunt's comments and provided the following response:

Planning application P2008/1294 for an Aldi Store proposal for the site in question included the following highways reasons for refusal.

(4) The applicant has used inadequate information in determining their Transport Assessment and thus has not been able to show that the traffic flow generated by this development will not cause further disruption to the safety and free flow of traffic on the busy highway which already suffers from severe congestion at peak times during school term time. As such the proposals are considered contrary to polies 14 and T1 of the Neath Port Talbot Unitary Development Plan.

(5) The applicant is not able within the constraints of their land ownership to construct a road junction access in accordance with the recognised design standard TD 42/95. The proposal submitted is below standards and does not

comply with the safety assessment submitted within the transport assessment. What is proposed will be detrimental to road safety and the safety and free flow of traffic on this busy local distributor road (A474). This would be contrary to Policies 14, GC1 and T1 of the Neath Port Talbot Unitary Development Plan.

This decision was approximately 12 years ago, and the applicant has since appointed a competent Transport Planning Consultant (Entran) to undertake a rigorous traffic survey, full modelling assessment and predicted traffic trip and delay forecast up to 15 years in accordance with TAN 18. The new and recent Traffic Impact Assessment (TIA) - undertaken pre-COVID – has been reviewed with the results showing a slight increase over the 15 year period which would be expected, but raising nothing significant in respect of potential delays and vehicle saturation levels.

In addition to this, the council had undertaken our own assessment of the traffic signals near Dwr-y-Felin Comprehensive School under a separate scheme funded by the Welsh Government. This scheme involved the introduction of a MOVA (Microprocessor Optimised Vehicle Actuation) system which are commonly used on telematics (Traffic lights) where there are matters of vehicle capacity. This MOVA system was installed shortly after the Aldi assessment was completed, and has provided a significant improvement to the traffic capacity and delays because the MOVA system seeks to give precedence to the vehicle arms that has the most capacity. Therefore the TIA submitted by the applicant has been approved by the Highways Authority, and also verified by our telematics engineer, and on this basis we offer no highway objection.

In addition to the above, he notes that these assessments of the TIA and the installation were all undertaken, and in place before any COVID lockdowns. The need to work from home is likely to be the new normal for many employees, which in itself may reduce traffic congestion and delays because of the need for less travelling.

The matter of acquiring land to accommodate a sufficient and acceptable access together with a right turn lane has also been addressed for the current submission, with the applicant having been in negotiations with relevant land owners, and now confidently progressed with submitting a scheme that is compliant with Design Manual for Roads and Bridges (DMRB). The applicant is currently in discussions with highways authority for the adoption of the proposed scheme. Subject to the conditions within the report, we offer no highway objection.

**Councillor Chris Williams** has also asked the following question in advance:

*“Is it true that the traffic survey took place when the children was on holidays.”*

Response:

The Highway Officer has advised that the traffic survey was undertaken from 15<sup>th</sup> October 2019 to 21<sup>st</sup> October 2019. This was outside half term/school holidays (which were from 28<sup>th</sup> Oct to 1<sup>st</sup> Nov 2019). Therefore, the survey is valid in terms of collecting accurate data which encompasses the school and college whilst fully operational and occupied.

**Councillor Arwyn Woolcock** has asked the following questions in advance (with the Officer response given below each point):

1. *On Page 14 Consultations, the Report states that the Local Member initially objected but that the objection has subsequently been withdrawn. However, at the top of page 20, it states "As well as the above letters of objection from the public and local members we have also received letter of objection from two retailers..." Can you please clarify if the local Member is still objecting please?*

Response: It is understood that Cllr Jo Hale is now satisfied with the highway issues and is in favour of the development (as per the report). The other local Member, Cllr. Chris Williams is a member of the Planning Committee, and therefore will (if attending) make his views known as part of proceedings, albeit in his role as a Member of the Committee.

2. *Would the objectors have a strong case against this proposal based on the fact that the application site lies within the defined settlement limits but is not allocated for retail land use? (bottom of page 23)*

Response: When a site is not allocated for retail development, it must be assessed against the criterion within Policy R3. The report has undertaken such an assessment in detail and concluded that the development meets that Policy.

3. *Would the objectors have a strong case against this proposed development based on the criteria outlined at the top of page 20, and the decision of the Court of Appeal Case (Page 20)?*

Response: All of the issues raised by objectors have been assessed within the report, and are not considered to be sufficient grounds on which to refuse this application. The *Waterstone Estates* Court of Appeal case has been referred to in the report, and it is noted that the Council does not agree with the interpretation of that case by Lidl as a gateway test (i.e. that if it meets no 'need' then it must be refused). Nevertheless, as the report has concluded that there is a qualitative need for the development, there has not been a subsequent assessment of whether other material considerations would have outweighed any harm caused by any breach of Policy R3.

4. *If this application is approved by Committee, could the objectors challenge that decision, and would their case be strengthened because the application does not meet both quantitative and qualitative need?*

Response: Any decision made by the Local Planning Authority can be challenged by any aggrieved person through lodging a judicial review in the Courts. Unlike a planning appeal, the purpose of a judicial review is to challenge the lawfulness of a decision rather than the decision itself. A person may therefore only judicially challenge a decision on such grounds as **error of law or misinterpretation of policy**. In this respect it is considered that a decision based on the assessment and its conclusions would be lawful, even though it only concludes that there is a qualitative need for the development.

### Additional Representations:

Following publication of the report, two further letters of objection have been received from agents working on behalf of Morrisons and Lidl. In addition, 69 emails of support were received prior to the 2pm Friday deadline.

A summary of the representations (with responses incorporating advice from our retail consultant) are provided below:

#### **Peacock & Smith (P&S) (on behalf of Morrisons)**

In summary, we maintain our **objection** (submitted in November 2019 and April 2020) to the above-mentioned planning application on the grounds of conflict with the development plan and national policy:

- A significantly adverse impact on the town centre of Neath, anchored by Morrisons, which is underperforming and is vulnerable. The retail need and impact addendum continues to underestimate the impact of the proposal;
- Insufficient assessment of alternative sites in and on the edge of the town centre. There is no further information submitted by the applicant;
- Loss of protected employment land. This issue has not been addressed by the applicant;
- Potential for an adverse impact on the residential amenity of neighbouring properties, as the proposal is very close to existing residential properties that will be affected by noise from customer vehicles and from delivery vehicles; and
- Potential harm to trees subject to Tree Preservation Orders during construction works and removal of trees along the west/south-west side of the site which will have a negative impact on visual amenity of the local area.

In response to the letter, our retail consultant has noted that the representations reiterates what has already been submitted before, and does not provide any new information for us / the Council to take into account. They also advise that:

- Whilst it is fair to say that Avison Young (our consultant) and ALDI's consultants do not agree over the exact level of trade diversion from Neath town centre and also the clawback from Swansea store, it seems to me to be very unrealistic for P&S to claim that 0% of trade will be transferred from Swansea stores.
- P&S again claim that Morrisons have shared the 'actual' turnover of their town centre store, but they don't tell us what it is. The claim that the 'actual' turnover is lower is very vague, and it is difficult to place a lot of weight on these claims when no information is forthcoming.

In response to submissions that the report should address loss of protected employment land, and the loss of the site for employment policies would be *contrary* to local authority employment policies rather than '*necessary to meet*', the following is noted: -

- Policy EC 4 (Protection of Existing Employment Uses) seeks to ensure that proposals which would result in the loss of existing land or buildings in employment use satisfy criteria demonstrating that employment uses are no

longer viable or appropriate in this location; or continued use for employment purposes would have unacceptable impacts on the environment, local amenity or adjacent uses; or the existing space can be redeveloped for employment uses that achieve an increased level of employment combined with other appropriate uses.

As the report identifies the site comprises a forecourt to the front of the existing CSN Precision Engineering site. Nevertheless the frontage of the site has not been developed or used for employment purposes, and comprises vacant land / access and therefore it is considered that Policy EC4 does not strictly apply. Nevertheless, it is emphasised that the site does not impinge upon the CSN building or its subsequent operation, and given that Neath Port Talbot does not have a shortage of employment land, it is not considered that any objection could be sustained to the development of this site as proposed, especially given that it also has the added benefit of providing additional employment. No objections are therefore raised on such grounds.

Other matters raised have been addressed in the report.

### **Tetra Tech Planning (on behalf of Lidl)**

Tetra Tech Planning on behalf of Lidl) has submitted strong representations which indicate that they feel the application should be refused, and that to do otherwise would, in their opinion, *“be potentially unlawful and may provide the basis for a judicial challenge”*.

The submissions largely follow the objections raised previously which have been addressed in the report, and are summarised below: -

- They maintain the view that ‘need’ is a gateway test and in their view the application fails to meet the requirements, and the application should be refused, noting that PPW is explicit in its requirement that precedence should be given to quantitative considerations, and the absence of such need should weigh heavily in the overall consideration of need
- The site is not in existing retail use nor is it allocated for retail use. Its development for such uses evidently does not support the retail strategy or adopted plan.
- There is no evidence to suggest that the proposal will contribute to a ‘significant reduction’ in car journeys or traffic congestion. The applicant’s suggestions of the potential of the proposal to clawback leakage are substantially exaggerated.
- There is no evidence of overtrading of existing stores of stores in Neath as a whole. It is interesting to note that the applicant considers that the Morrisons store trading performance of 58% of benchmark levels is not a cause for concern in terms of fragility and impact, but a store trading at 17% above benchmark levels (Tesco) is need of ‘alleviation’ of overtrading conditions.
- The site is out-of-centre and so evidently does not contribute to the co-location of facilities in designated centres.

- The applicant has not provided evidence of local deficiencies or a lack of convenience provision – Neath is amply served by existing foodstores with more provision already committed. Within 1km of the site are Tesco, Morrisons and Lidl stores. The apparent deficiency caused by a lack of an Aldi store in the Neath area is an irrelevance and a ‘fascia blind’ approach is required as per ***Aldergate Properties Ltd v Mansfield DC [2016] EWHC 1670***.
- The applicant has failed to consider whether any deficiency in provision could be achieved by extending or improving existing stores in the Neath area. It is noted that the Committee Report only goes as far as to suggest the qualitative grounds advanced by the applicant ‘*can help*’ to demonstrate compliance with part of Policy R3, and that there is ‘*arguable*’ qualitative need. Such comments clearly infer that there is an absence of a compelling qualitative need, which, compounded by the confirmed absence of a quantitative need, weighs very heavily to the conclusion that there is no need for the proposed development.

In terms of retail impact, the representations maintain their disagreement with the applicant’s retail assessment, stating that:

- the applicant’s Swansea-focused suggested pattern of trade diversion is an attempt to mask the true impact on Neath-based stores, which will be much higher than PP suggest,
- the diversion of trade from Morrison has been considerably underestimated, with the trade diversion ‘loaded’ onto the out-of-centre store to disguise the likely impact on the town centre store, giving rise to concern that the impact on trade and footfall, and the vitality and viability of the town centre has not been robustly assessed

Our retail consultant has reviewed these submissions and noted that the additional representations do not add anything new and material to their previous representations. He further notes that a supplied appeal decision in Newport (which refers to *Waterstone* but in his opinion interprets it incorrectly) should not in any event be given more weight than the Court judgement.

They also continue to raise objection on grounds that the applicant is unable to demonstrate that the proposed development will not increase flood risk elsewhere, and there remains no assessment of the potential impact of the development both in terms of frequency of flooding and 3rd party detriment. In response, however, Officers are satisfied with the assessment of flood risk within the report in respect of the effect on 3<sup>rd</sup> party land, which follows appropriate consultation with and response from NRW.

**Corun Transport and Planning** have also submitted a letter (on behalf of Lidl) dealing with highway matters which states that the majority of their concerns remain unresolved. They state that “the applicant’s evidence falls short of industry standards and should not be relied upon to make an informed decision” and that the application merits refusal on highway grounds.

In response, it is noted that the report addresses all highway matters, and the Highway Officer has confirmed that he is satisfied with the supporting information provided by the applicants, and that the Highway officer has reached his conclusions following a rigorous review.

**69 Emails of Support** have been received (prior to the 2pm Friday deadline) which are similar comments to that raised during the course of the application and addressed within the officers report, but are summarised below: -

- Aldi has been voted the No 1 supermarket in the country, having this in Neath would be a great benefit to the Local Economy
- Aldi's prices and quality second to none, and every penny counts when you are a pensioner.
- The store would offer greater consumer choice and provide much needed well paid full time and part time jobs in area
- Aldi provides more affordable shopping with a better choice of goods and services. This will give a big boost for the community and local economy
- The store will command a cheaper price competition between other stores in the area. That can only be beneficial to the residents of the surrounding area, plus it will also be a store of convenience for them.
- It would be a great asset to the communities of Neath Abbey and Skewen for its shopping costs and convenience, especially if you do not drive.
- It would be ideal to have another quality store in the area. As a resident of Neath I've personally been traveling to Port Talbot or Llansamlet to visit a local store, having one in Neath would make it much easier.
- Having more competitive stores can only be good for local residents.
- This store will not pose any traffic issues over and above what Tesco, Lidl and the school already have upon the area.
- My nearest Aldi where I shop is in Llansamlet, having a local store would be very beneficial, it will stop the residents of Neath going to Llansamlet to do their shopping boosting the local economy.
- Since lockdown I have been unable to travel to Llansamlet and have had to shop at Tesco, I find the difference in the price of my weekly shop quite a lot and we have really missed the value and range that Aldi provide.